

THE STATE OF NEW HAMPSHIRE

MERRIMACK, SS.

SUPERIOR COURT

IN THE MATTER OF THE WINDING DOWN OF:

THE NEW HAMPSHIRE MEDICAL MALPRACTICE  
JOINT UNDERWRITING ASSOCIATION

No. 217-2015-CV-00347

**RECEIVER'S MOTION FOR APPROVAL OF  
HARDSHIP GRANT APPLICATION PROCESS**

Roger A. Sevigny, Insurance Commissioner for the State of New Hampshire, as Receiver ("Receiver") of the New Hampshire Medical Malpractice Joint Underwriting Association ("NHMMJUA"), moves for approval of a process for handling requests for hardship grants pursuant to RSA 404-C:16, III. The proposed process is set forth on Exhibit A and a related application form is set forth on Exhibit B. As reasons therefor, the Receiver respectfully states:

1. The recently enacted Act regarding the dissolution of the NHMMJUA, 2015 Laws 263 ("Act"), requires the Receiver to allocate a portion of NHMMJUA surplus to establish a hardship fund in the amount of \$2,000,000 within 60 days of the initiation of the receivership. RSA 404-C:16, III. The Receiver accordingly has allocated \$2,000,000 of NHMMJUA surplus to a hardship fund on the NHMMJUA's books.

2. The hardship fund is to be available for hardship grants to current NHMMJUA policyholders who suffer significant economic hardship when moving to the private insurance market. The Act provides that:

The hardship fund shall be available to provide grants payable directly to midwives certified under RSA 326-D and other health care providers who are licensed or approved by the state, who have in-force policies with the NHMMJUA as of the effective date of this section, and who can demonstrate by application to the receiver that they will suffer significant adverse economic hardship as a result of an increase of at least 25% in the cost of medical malpractice insurance coverage in the private market as compared to their coverage from the NHMMJUA as of the effective date of this section.

RSA 404-C:16, III. This section was enacted by 2015 Laws 263:2, which became effective on July 20, 2015. See 2015 Laws 263:16, V.

3. To obtain a hardship grant under the Act, a provider must thus show that the provider (a) is a midwife certified under RSA 326-D and or another health care provider licensed or approved by the State with an in-force medical malpractice policy with the NHMMJUA as of July 20, 2015; and (b) will suffer “significant adverse economic hardship as a result of an increase of at least 25% in the cost of medical malpractice coverage” from the premium charged for the most recent NHMMJUA coverage. See RSA 404-C:16, III. The Legislature has thus required that an eligible provider incur an increase in premium of at least 25% and that the increase cause “significant adverse economic hardship” to obtain a hardship grant.

4. The hardship provision was included in the Act principally on account of midwives, who are expressly referred to in RSA 404-C:16, III. The Insurance Department’s Report on Availability of Medical Malpractice Insurance (February 19, 2015)<sup>1</sup> specifically identified certified professional midwives as a type of provider for

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<sup>1</sup> The Report was submitted to the Legislature pursuant to recommendations contained in the Final Report of the Commission to Study the New Hampshire Medical Malpractice Joint Underwriting Association established by former RSA 404-I (see 2014 Laws 293). The Report is posted on the Insurance Department website at <http://www.nh.gov/insurance/legal/jua.htm> (last visited September 16, 2015).

whom medical malpractice insurance outside the NHMMJUA may be “unaffordable.” Report at 12-13. The Report also noted that the NHMMJUA’s rates for radiologists may be lower than those charged by private insurers. Id. at 14. In this context, the Insurance Department suggested that a hardship fund “could help defray the cost of insurance for those providers showing financial need,” although it made no recommendation to the Legislature concerning such a fund. Id. at 18. The Receiver does not know how many providers will apply for grants, which will depend in part on the number of providers who incur increased premiums of at least 25%. (The Report noted that the NHMMJUA insured 10 certified professional midwives and 72 radiologists. Id. at 12, 13.)

5. The Receiver seeks to establish a process to govern applications for hardship grants. The application process will serve as the vehicle for providers to demonstrate that they are eligible for a grant and that they will suffer “significant adverse economic hardship as a result of an increase of at least 25% in the cost of medical malpractice insurance coverage.” RSA 404-C:16, III. To aid in assessing economic hardship, the Receiver proposes to ask how much of an applicant’s annual revenue (as a percentage) would be spent on the replacement coverage, in addition to requesting documentation of a 25% increase in premium and an explanation of the claimed economic hardship.

6. To inform potential applicants of the applicable standards and process, the Receiver has prepared the proposed “NHMMJUA Hardship Grant Process” summary attached as Exhibit A. To facilitate applications and the obtaining of necessary information, the Receiver has also prepared the proposed application form attached as Exhibit B. Use of a standard application form will provide a uniform basis for making

the two determinations that are necessary predicates for a hardship grant under the Act. The Receiver would provide a copy of Exhibits A and B to policyholders in conjunction with notice of nonrenewal of the NHMMJUA coverage. The Receiver would also post the NHMMJUA Hardship Grant Process summary and the application form in the NHMMJUA receivership section of the New Hampshire Insurance Department website.

7. Because the Act requires that a provider suffer significant adverse economic hardship from transfer to the private market in order to obtain a grant, the Receiver expects that providers will seek to maintain coverage with the NHMMJUA for as long as possible. The Receiver accordingly does not anticipate beginning to receive applications for hardship grants until he starts issuing notices of non-renewal of NHMMJUA policies in October 2015. The Act provides that the Receiver shall not issue any NHMMJUA policy with an effective date after December 31, 2015, RSA 404-C:15, II(c), and it requires the Receiver to issue notices of nonrenewal in compliance with RSA 417-C to policyholders with renewal dates on or after January 1, 2016. RSA 404-C:15, II(d). The Receiver will begin issuing notices of nonrenewal in October because RSA 417-C:3 requires notice at least 60 days in advance of a policy's scheduled expiration or anniversary date. The notices of nonrenewal will refer to the hardship grant process and application, identify the link to the summary and the application form on the New Hampshire Insurance Department website, and enclose copies of Exhibits A and B.

8. After receiving a grant application, the Receiver will make an eligibility determination and determine the amount of the hardship grant. The Act provides that "[a]ny grant provided shall not exceed the difference between the cost of insurance through the NHMMJUA plus 25% and the premium charged in the private market for the

most comparable coverage available.” RSA 404-C:16, III. The Act provides that the Receiver’s determination of grant eligibility shall be subject to court approval, id.; and the Receiver will submit requests for approval of his determinations to the Court. To simplify the review process and reduce the number of filings, the Receiver proposes to submit determinations to the Court in groups, as practical and appropriate, with notice of the request for approval being provided to the applicants in the group by mail. Any applicant who disagrees with a determination will have the right to file an objection to the determination with the Court within ten days of the filing of the request for approval. The Court will be the final arbiter of all determinations. Each request for approval will include the total amount of prior hardship grants, the total of hardship grants recommended in the particular request, and the remaining hardship fund balance.

9. As provided in the Act, the Receiver will administer the hardship fund until it is exhausted or until the termination of the receivership, whichever occurs first. RSA 404-C:16, III. If in light of the number and amounts of grants requested by eligible applicants the Receiver anticipates that the hardship fund will be exhausted, the Receiver will promptly report to the Court with recommendations. The Act directs that, if funds remain in the hardship fund at the termination of the receivership, “the receiver shall, with court approval, and before discharge of the receiver, transfer any remaining funds to a charitable organization that promotes aid to health care providers servicing medically underserved populations.” Id. The Receiver will seek approval for any such transfer at the conclusion of the receivership.

10. The Receiver submits that the proposed hardship grant process and application form are consistent with the Act and will facilitate the effective, fair and economic determination of applications for hardship grants.

WHEREFORE, the Receiver requests that the Court:

- a. Grant this motion;
- b. Enter an order in the form submitted herewith approving the process for hardship applications set forth on Exhibit A and the application form set forth on Exhibit B; and
- c. Grant such other relief as equity and justice may require.


Respectfully submitted,

ROGER A. SEVIGNY, INSURANCE  
COMMISSIONER OF THE STATE OF NEW  
HAMPSHIRE, AS RECEIVER OF THE NEW  
HAMPSHIRE MEDICAL MALPRACTICE JOINT  
UNDERWRITING ASSOCIATION

By his attorneys,

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160 Federal Street  
Boston, MA 02110  
(617) 542-2300

September 16, 2015

**Certificate of Service**

I hereby certify that a copy of the foregoing Receiver's Motion for Approval of Hardship Grant Application Process, and the Proposed Order, were sent this 16th day of September, 2015, by first class mail, postage prepaid to all persons on the attached service list.



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Eric A. Smith  
NH Bar ID No. 16952



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No. 217-2015-CV-00347

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**NHMMJUA HARDSHIP GRANT PROCESS**

Roger A. Seigny, Insurance Commissioner of the State of New Hampshire, as Receiver ("Receiver") of the New Hampshire Medical Malpractice Joint Underwriting Association ("NHMMJUA"), has allocated \$2,000,000 of surplus to a hardship fund as required by RSA 404-C:16, III. The hardship fund is available for hardship grants to certain NHMMJUA policyholders as provided in RSA 404-C:16, III.

1. Midwives certified under RSA 326-D and other health care providers who are licensed or approved by the State of New Hampshire who have in-force policies with the NHMMJUA on July 20, 2015 may apply to the Receiver for hardship grants using the attached NHMMJUA Hardship Grant Application Form. Applicants shall submit the completed Application, including the required attachments, to the NHMMJUA's Receiver at Receiver, NHMMJUA, C/O Hays Companies, 133 Federal Street, Boston, MA 02110 (or Fax: 617-723-5155).

2. To be eligible for a hardship grant, the applicant must be a midwife certified under RSA 326-D and or another health care provider licensed or approved by the State of New Hampshire with an in-force medical malpractice policy with the NHMMJUA as of July 20, 2015. The Application Form requests this information.

3. To receive a hardship grant, the applicant must show that the applicant has or will suffer significant adverse economic hardship as a result of an increase of at least 25% in the cost of medical malpractice coverage. This requires that the applicant show (a) an increase of at least 25% in the cost of medical malpractice coverage as compared to the cost of coverage from the NHMMJUA as of July 20, 2015, and (b) significant adverse economic hardship from the increase. To demonstrate such an increase, the applicant shall submit a binding quote for medical malpractice coverage from an insurer in the New Hampshire private market that is comparable to the applicant's coverage with the NHMMJUA as of July 20, 2015. To show economic hardship from the increase, the applicant shall provide the percentage of its annual revenue (gross revenue before expenses) that would be spent on the replacement medical malpractice coverage and an explanation of how the increase will cause significant economic hardship. The Application Form requests this information.

4. The Receiver shall review applications after they are received. If an application form is incomplete, or if the Receiver needs additional information, the Receiver may request that the applicant provide additional information to complete the application.

5. The Receiver shall determine whether each applicant is an eligible provider as described in paragraph 2 and has suffered significant adverse economic hardship from an increase in cost of at least 25% as described in paragraph 3. If the applicant is an eligible provider suffering the requisite significant adverse economic hardship, the Receiver shall determine the amount of any hardship grant. As provided in

RSA 404-C:16, III, any grant provided shall not exceed the difference between the cost of insurance through the NHMMJUA plus 25% and the premium charged in the private market for the most comparable coverage available. If the applicant is not an eligible provider or if the applicant has not demonstrated that the increase in premium will cause significant economic hardship, the Receiver shall deny the application. In all instances, the Receiver shall notify the applicant of the determination and that the Receiver will seek approval of the determination from the Court with notice to the applicant.

6. The Receiver shall request approval of all determinations from the Court. The Receiver may submit determinations to the Court in groups as he deems practical and appropriate. Each request shall provide the total amount of prior hardship grants, the total of hardship grants recommended in the request, and the remaining hardship fund balance. The Receiver shall serve a copy of the request for approval of the determination on the applicant by mail and shall provide notice that the applicant may object to the determination by filing an objection with the Court within ten days of the date the request for approval is filed with the Court. The Court shall be the final arbiter of all determinations.

7. The Receiver shall administer the hardship fund until it is exhausted or until the termination of the receivership, whichever occurs first. Each grant shall be for a one-year period, and recipients may be eligible for further grants in subsequent years if the hardship fund is still in effect. If in light of the number and amounts of grants requested by eligible applicants the Receiver anticipates that the hardship fund will be exhausted, the Receiver shall promptly report to the Court with recommendations. If funds remain in the hardship fund as the end of the receivership approaches, the Receiver shall seek the approval of the Court for the transfer of any remaining funds to a charitable organization that promotes aid to health care providers servicing medically underserved populations in accordance with RSA 404-C:16, III.

## NHMMJUA HARDSHIP GRANT APPLICATION

**A. Applicant information:**

Full Name \_\_\_\_\_ Tax Identification No. \_\_\_\_\_  
Please print [If not provided, backup withholding of 28% will be made]

Address \_\_\_\_\_  
 Street City State Zip Phone

Is the applicant a midwife certified under RSA 326-D or other health care provider licensed or approved by the State of New Hampshire? Yes      or No       
If yes, please specify and provide certificate, license or approval number:

**B. Applicant NHMMJUA policy information:**

- (1) NHMMJUA Policy Number: \_\_\_\_\_  
 (2) Annual premium for NHMMJUA coverage as of July 20, 2015: \$ \_\_\_\_\_  
 (3) Attach NHMMJUA policy declarations page or renewal certificate

**C. Applicant replacement coverage information:**

- (1) Replacement annual coverage quote from another insurer: \$ \_\_\_\_\_
- (2) Attach binding replacement coverage quote (including limits, deductible, effective date, expiration date, specific coverage quoted, and premium)
- (3) Has applicant purchased the replacement coverage quoted?  
Yes ☐ or No ☐ If yes, what is the effective date?

**D. Significant adverse economic hardship information:**

- (1) Is the replacement annual premium quoted more than 25% greater than the applicant's NHMMJUA annual premium as of July 20, 2015? Yes \_\_\_ or No \_\_\_
- (2) What percent of the applicant's 2014 annual gross revenue before expenses does the annual replacement premium quoted above represent? \_\_\_% (Annual replacement premium quoted divided by 2014 annual revenue times 100)
- (3) Will the applicant suffer significant adverse economic hardship from the increase of at least 25% in the cost of medical malpractice insurance coverage? Yes \_\_\_ or No \_\_\_. If yes, please explain how:

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- E. Hardship grant amount requested: \$\_\_\_\_\_ (Under RSA 404-C:16, III, any grant provided may not exceed the difference between the cost of insurance through the NHMMJUA plus 25% and the premium charged in the private market for the most comparable coverage available.)

The statements and information provided above are true and accurate.

Date \_\_\_\_/\_\_\_\_/\_\_\_\_ Applicant signature\_\_\_\_\_

Return completed form and attachments to:

Receiver, NHMMJUA  
C/O Hays Companies  
133 Federal Street  
Boston, MA 02110

(or Fax: 617-723-5155)